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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MGE - 174876

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 7, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services regarding Medical Assistance (MA), a hearing was held on July 7, 2016, by telephone.

The issue for determination is whether Waukesha County Health and Human Services (the agency) correctly counted money placed in escrow as countable assets.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner's Representative:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent:**

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED], Economic Support Specialist  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On February 24, 2016, the Petitioner submitted an application for Long Term Care Medicaid benefits, seeking coverage effective February 1, 2016. (Exhibit 6)
3. On March 29, 2016, the agency sent the Petitioner's son a notice, advising him that the Petitioner's application had been denied, because the required verification was not submitted and because she was over the asset limit. (Exhibit 8)
4. On April 8, 2016, the Petitioner submitted another application with a backdated coverage request, seeking Medicaid coverage from February 1, 2016 going forward. (Exhibit 10)
5. On May 2, 2016, the agency sent the Petitioner a notice, indicating that her application was approved and that she would be enrolled in Nursing Home Long Term Care Medicaid form April 1, 2016, going forward. The notice further indicated that she would not be enrolled for February or March 2016, because she was over the asset limit. (Exhibit 9)
6. The May 2, 2016, notice further indicated that for February 2016, the agency counted \$10,105.12 in assets and in March 2016, the agency counted \$3,739.98 in assets. (Id.)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 7, 2016. (Exhibit 1)
8. On January 28, 2016, the Petitioner, through her power of attorney, entered into an escrow agreement with a catering company and her attorney to cover the \$2,300 cost of catering her husband's wake. Petitioner's attorney served as the third-party agent and received a check from Petitioner on that same date. (Exhibits 4 and 7)
9. The law firm disbursed the funds to the catering company on April 15, 2016, after the April 9<sup>th</sup> wake. (Exhibit 2)
10. On January 28, 2016, the Petitioner, through her power of attorney, entered into an escrow agreement with a painting company to cover the \$2,260.00 cost for work to be performed on her home. Petitioner's attorney served as the third-party agent and received a check from Petitioner on that same date. (Exhibit 3 and 7)
11. The law firm disbursed funds to the painting company on February 22, 2016. (Exhibit 2)
12. On January 28, 2016, the Petitioner, through her power of attorney, signed an escrow agreement with her attorney, allowing the attorney/firm to hold \$1,955.67 in escrow to pay a flooring company. However, the flooring company did not sign the escrow agreement. The Petitioner's attorney was named as the third-party agent and received a check on that same date. (Exhibit 7)
13. The law firm disbursed funds to the flooring company on February 10, 2016. (Exhibit 7)

### **DISCUSSION**

In order to be eligible for Medicaid benefits, an individual must have assets below \$2000.00. *Medicaid Eligibility Handbook (MEH)* §39.4.1; See Wis. Stat. §§ 49.46(1) and 49.47(4).

In the case at hand, the parties dispute whether the Petitioner was asset eligible in February 2016 and March 2016. Specifically, the parties dispute whether \$6,515.67 that was being held in escrow was a countable asset.

#### **16.2.1 Assets Availability Introduction**

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days

Consider an asset as unavailable if **either**:

1. The member lacks the ability to provide legal access to the assets, and
2. No one else can access the assets, and
3. A process has been started to get legal access to the assets.

*MEH §16.2.1*

An escrow is a written agreement between a grantor (in this case, the Petitioner), a grantee (in this case the various, contractors), and a third-party/escrow agent (in this case, Petitioner's attorney/firm). Black v. Metro Title, Inc., 2006 WI App 52 at ¶10 The grantor gives the third-party/escrow agent money to hold, until the grantee performs the promised work; then the third party releases the money to the grantee. Id. The escrow agent, therefore, has a fiduciary duty to both parties of the escrow contract. Black v. Metro Title, Inc., 2006 WI App 52 at ¶10 *citing to Trevino f. Brookhill Capital Resources, Inc.*, 782 W. W. 2d 279, 281 (Tex.App.-Houston[1st Dist.] 1989, writ denied)

Petitioner's attorney argues that once the money was placed in escrow it was no longer available for the Petitioner to use for her support, because it was given to the escrow agent to guarantee payment to the contractors.

With regard to the escrow agreements for painting and catering, the contractors were signatories to the escrow agreements. As such, Petitioner could not renege on those contracts and access the money that was put in escrow without legal consequence. Indeed, to allow grantors to willy-nilly renege on escrow agreements, defeats the very purpose of the agreement, which is to guarantee payment to the grantee. Further, the law firm holding the money, had a fiduciary duty to the contractors, to pay the contractors, upon completion of their work/services and could not return the money to the Petitioner without breaching that duty.

Although the escrow agreements indicate that money in the escrow account could be returned to the Petitioner, it could only be returned with the consent of the contractor. (See page 2, ¶¶ 4 and 6 of Exhibits 3 and 4) It is unlikely, the painting company and the catering company would have agreed to return the money to the Petitioner, since they expected to perform the services as agreed, they did perform the services as agreed, and therefore, needed to be paid for those services.

Based upon the foregoing, it is found that the money placed in escrow under agreements with the painting company and caterer were unavailable assets and therefore, not countable in February or March 2016.

With regard to the escrow agreement for flooring services; the contractor was not a signatory to that agreement. An escrow agent has no fiduciary duty to anyone who is not a party to the contract. Black v. Metro Title, Inc., 2006 WI App 52 at ¶¶ 9 and 10 Because the flooring company never signed the escrow agreement, the law firm had no fiduciary duty to the flooring company and could

return the money to the Petitioner without incurring any liability and would be required to return the money to Petitioner had she asked for it back. As such, the money given to her attorney to cover the cost of the flooring contract, was an available asset in February 2016, but not in March 2016, since it has been paid out in February 2016.

### **CONCLUSIONS OF LAW**

The agency correctly counted \$1,955.67 placed in “escrow” as an asset in February 2016, because the flooring contractor never signed the escrow agreement. The \$1,955.67 should not have been counted as an asset in March 2016, because it was paid out in February 2016.

The agency incorrectly counted as an asset for February and March 2016, \$2,300 placed in escrow for catering serves and it incorrectly counted as an asset \$1,955.67 placed in escrow for painting services.

**THEREFORE, it is**

### **ORDERED**

That the agency re-determine the Petitioner’s eligibility for Medicaid coverage for the months of February 2016 and March 2016, excluding from Petitioner’s assets, the \$2,300 placed in escrow for catering serves and the \$1,955.67 placed in escrow for painting services.

For March 2016, the agency shall also exclude the \$1,955.67 paid to the flooring contractor, since that money was paid out in February 2016.

The agency shall issue to Petitioner a new notice advising her of its new eligibility determination.

The agency shall take all administrative steps to complete these tasks within ten days of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

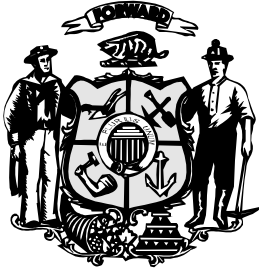
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this

decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of  
Milwaukee, Wisconsin, this 16th day of  
August, 2016

\s \_\_\_\_\_  
Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on August 16, 2016.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability  
[REDACTED]